* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : August 17th, 2007
Date of decision: August 20th, 2007

\+ W.P.(C) 5040/2007

VINOD KUMAR ..... Petitioner
Through Ms. Pooja Dutt, Mr. Narender Dutt, Advocates

versus

THE HEAD & DEAN FMS UNIVERSITY
OF DELHI AND ANR. ..... Respondent
Through Mr. Mariarputham, Advocate

CORAM:
Mr.Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

%Mr. Justice S. Ravindra Bhat:

1. The petitioner claims a mandatory order to the respondent to withdraw the result declared on 24.4.2007 and quash a letter issued to him on 29.4.2007; these had the effect of rejecting his candidature to the MBA (Part-Time) Programme in the Session 2007-2010, conducted by the Faculty of Management Studies (hereafter "FMS"), Delhi University.

2. The petitioner's father was a disabled defence personnel; he died on 22.12.2004. The

petitioner had applied in January, 2007 for admission to the Part-Time Three Year MBA Programme (hereafter referred to as "the Course"). There were 140 seats in the course; including seven seats for children/wards of defence personnel. The petitioner appeared in the common admission test held for purposes of admission to the course on 21.4.2007. He was called for interview on 24.4.2007, after verification of his testimonials. It is averred that the respondents declared the results of the C/W reserved category of Defence Personnel seats – only three candidates were offered admission but not the petitioner. He claims to have performed well in the interview.

3. On 29.5.2007 Petitioner was informed by the FMS that he did not fulfill the eligibility criteria of having three years of experience as an "Executive" or an Administrator in a commercial, industrial or Government establishment – so his candidature had been cancelled. The said letter reads as under :

> *"This is to inform you that your representation was considered by Faculty of Management Studies at its appropriate level, and it was decided to convey to you that you do not fulfill the eligibility criteria of having at least three years experience as an Executive or an Administrator in a commercial, industrial or government establishment."*

4. It is contended on behalf of the petitioner that the decision of the respondents is unsustainable. It is so averred in the petition and contended by Ms. Puja Anand that the petitioner had ample experience to fulfill the description of the term "Executive". She relied upon the description of work experience after graduation, disclosed to the Faculty in the application form. The same reads as follows :

Organization(s)	***Designation(s)***	***From***	***To***	***Monthly Salary***
KFC(Kentucky Fried Chicken)	*Customer Care Executive*	*1 June 1998*	*September 2000*	*4500/-*
Pizza Hut	*Floor Supervisor*	October 2000	May 2002	*8500/-*
Planning Commissioner, Government of India	*Junior Translator*	22nd August 2003	till date	*14770/-*

5. Learned counsel submitted that the respondents acted arbitrarily in taking the position that the petitioner was ineligible. It was not open for them to put forward such a contention as he was permitted to appear in the examination and participate in the interview. This clearly established that at the stage of screening, the FMS and the University formed an opinion that he answered the description of an "Executive" with three years' professional experience. Counsel also contended that in the absence of any criteria or definition as to what is the content of the expression "executive", that term should be given a literal meaning. In its most general sense it means an organ or wing of the Government. She relied upon Roget's Thesaurus, particularly its definition of the term "Executive". According to the description it includes an agent which would embrace a multitude of persons having diverse roles. Counsel also relied upon the expression "Executive" in K.J. Iyer's Dictionary (11th Edn. 1997) which terms "Executive" as that branch of the Government which puts the laws into execution as distinguished from the legislative and judicial branches.
6. Mr. Mariarputham, learned counsel for the respondents relied upon the stipulation in the Admission bulletin which reads as follows :

> *"Candidates should have at least three years experience as an executive or an administrator in a commercial, industrial or government establishment after passing the Bachelor's Degree Examination"*

7. Counsel also relied upon the programme structure set out in the Bulletin of Information, which described that the MBA (Part-Time) Programme is specifically designed to be in synchronicty with participants career paths. The participants are expected to maintain full time employment. The programme structure also indicates that the FMS curricular and environment foster essential management skill, knowledge and attitudes; classmates in turn share their diverse management backgrounds. The description of the prgoramme structure concludes in the following terms :

> *"The two synergize to provide participants with the insight and capacity to make successful on the job contribution, preparing them for higher executive responsibility. This programme has several streams of specialization"*

8. The term "Executive" has not been admittedly defined or spelt out in the bulletin. In such circumstances, the Court has to fall back upon the normal grammatical meaning. Extrinsic aids to construction of such an expression would be general dictionaries. The Merriman – Webster on line Dictionary defines "Executive" as "someone who exercises administrative or managerial control". Black's Law Dictionary defines an "Executive employee" as follows :-

> *"An employee whose duties include some form of managerial authority and active participation in the control, supervision and management of the business often shortened to executive."*

Likewise, The Shorter Oxford English Disctionary (5th Edn.) states that "Executive" means :

> *"A person in an executive position in a business; a person skilled in executive or administrative work; a business man, a business woman."*

9. The above discussion would show that a common theme or idea which recurs in all the definitions of the term "Executive" is the element of managerial control. If one construes this from the perspective of the programme objectives contained in the bulletin, it is evident that the intention of the course is to promote continuing education on a Part-Time basis for professionals who are engaged in actual administrative or managerial capacities and who fall within the general rubric of the term "Executive". Mere loose employment of the term for any one job or its liberal use is insufficient to enable a candidate to be eligible. Having regard to the specific objective for which the Three Years Part-Time course is designed and has been offered, I am of the opinion that not all candidates but only those who perform managerial, administrative or executive functions in that sense of the term, can be admitted to the course. It is not academic brilliance or performance of a candidate in his graduation which might, otherwise, entitle him or render him eligible to apply for a full time course which is relevant here; the course is designed in a sense as a continuing education programme to enhance academic capacities of professionals. In view of these, I am satisfied that none of the posts held by the petitioner, (i.e. customer care executive, floor supervisor or Junior Translator) answers the

description of “Executive”.

10. For the above reasons this petition has to fail. It is accordingly dismissed without any orders as to costs.

August 20, 2007

(S. RAVINDRA BHAT)
JUDGE